

Office of the Secretary of Defense

§ 34.42

procurement provisions of Appendix A to this part, as applicable.

REPORTS AND RECORDS

§ 34.40 Purpose of reports and records.

Sections 34.41 and 34.42 prescribe requirements for monitoring and reporting financial and program performance and for records retention.

§ 34.41 Monitoring and reporting program and financial performance.

Grants officers may use the provisions of 32 CFR 32.51 and 32.52 for awards to for-profit organizations, or may include equivalent technical and financial reporting requirements that ensure reasonable oversight of the expenditure of appropriated funds. As a minimum, equivalent requirements must include:

(a) Periodic reports (at least annually, and no more frequently than quarterly) addressing both program status and business status, as follows:

(1) The program portions of the reports must address progress toward achieving program performance goals, including current issues, problems, or developments.

(2) The business portions of the reports shall provide summarized details on the status of resources (federal funds and non-federal cost sharing or matching), including an accounting of expenditures for the period covered by the report. The report should compare the resource status with any payment and expenditure schedules or plans provided in the original award; explain any major deviations from those schedules; and discuss actions that will be taken to address the deviations.

(3) When grants officers previously authorized advance payments, pursuant to § 34.12(a)(2), they should consult with the program official and consider whether program progress reported in the periodic report, in relation to reported expenditures, is sufficient to justify continued authorization of advance payments.

(b) Unless inappropriate, a final performance report that addresses all major accomplishments under the award.

§ 34.42 Retention and access requirements for records.

(a) This section sets forth requirements for records retention and access to records for awards to recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the DoD Component that made the award, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, and related records, for which retention requirements are specified in § 34.42(g).

(c) Copies of original records may be substituted for the original records if authorized by the grants officer.

(d) The grants officer shall request that recipients transfer certain records to DoD Component custody when he or she determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a grants officer may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) DoD Components, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents.

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The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, no DoD Component shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the DoD Component can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the DoD Component making the award.

(g) Indirect cost proposals, cost allocation plans, and other cost accounting documents (such as documents related to computer usage chargeback rates), along with their supporting records, shall be retained for a 3-year period, as follows:

(1) If a recipient is required to submit an indirect-cost proposal, cost allocation plan, or other computation to the cognizant Federal agency, for purposes of negotiating an indirect cost rate or other rates, the 3-year retention period starts on the date of the submission. This retention requirement also applies to subrecipients submitting similar documents for negotiation to the recipient.

(2) If the recipient or the subrecipient is not required to submit the documents or supporting records for negotiating an indirect cost rate or other rates, the 3-year retention period for the documents and records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(h) If the information described in this section is maintained on a computer, recipients shall retain the computer data on a reliable medium for the time periods prescribed. Recipients may transfer computer data in machine readable form from one reliable computer medium to another. Recipients' computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original computer data. Recipients shall also maintain an audit trail describing the data transfer. For the record retention time periods prescribed in this section, recipients shall

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not destroy, discard, delete, or write over such computer data.

TERMINATION AND ENFORCEMENT

§ 34.50 Purpose of termination and enforcement.

Sections 34.51 through 34.53 set forth uniform procedures for suspension, termination, enforcement, and disputes.

§ 34.51 Termination.

(a) Awards may be terminated in whole or in part only in accordance with one of the following:

(1) By the grants officer, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the grants officer with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to the grants officer written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. The recipient must provide such notice at least 30 calendar days prior to the effective date of the termination. However, if the grants officer determines in the case of partial termination that the reduced or modified portion of the award will not accomplish the purposes for which the award was made, he or she may terminate the award in its entirety.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 34.61(b), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 34.52 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the grants officer may,